IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2218 OF 1990

Ramchandra Vasudev Deo
deceased by heir,
Dattatraya Ramchandra Deo
residing at 227, Somwar Peth,
Karhad, District Satara .. Petitioner.

Vs.

1. Maruti Rama Divte
deceased by heirs
1a. Manohar Maruti Divte
residing at Village Tember
Taluka Karhad, Dist.Satara ..
1b. Tarubai Dattar Salokhe
residing at Village Ghogaon,
Taluka Karhad, Dist.Satara ..

2. Mahadeo Shankar Bhusari
residing at Village - Tembre
Taluka Karhad, Dist.Satara ..

3. Vasant Vishnu Patil ..

4. Santosh Vasantrao Patil
since deceased by heir
4a. Jagdish Vasantrao Patil
Nos.3 and 4a residing at
Village Koregaon,
Taluka Karhad, Dist.Satara .. Respondents.

Mr.P.S.Dani for the petitioner.

Mr.S.A.Pawar with Mr.R.N.Kachare for respondent nos.3 and 4a.

CORAM : D.B.BHOSALE, J.

DATED : 23RD SEPTEMBER, 2004

ORAL JUDGMENT:

1. The petitioner-landlord has challenged the judgments and orders passed by the authorities below rejecting his application seeking resumption and disposal of land in the manner provided in sub-section (2) of section 32P of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Act") by declaring the purchase of the lands in question by deceased - Maruti Divte, now represented by respondent nos.1A and 1B-tenant (for short ‘the tenant’), ineffective. The order of Maharashtra Revenue Tribunal passed in Revision is dated 8.3.1990.

2. The factual matrix that would be relevant and material, in brief, is as follows: The petitioner is original landlord of the lands in which deceased - Maruti Rama Divate, father of respondent nos.1A and 1B was a tenant. The proceedings under section 32-G were conducted and on 11.10.1961 the purchase price was determined and the tenant was allowed to pay the purchase price in five instalments. It reveals that the tenant did not pay all the instalments within the time granted by the order dated 11.10.1961. Since the instalments were not paid and the land was being cultivated by third person, on 28.12.1970 the

petitioner filed an application before A.L.T. bearing Application No.99/1970 seeking resumption and disposal of the land declaring the purchase of the lands ineffective and disposing them of in the manner provided in sub-section (2) of section 32P of the Act. In the said proceedings the heirs of original tenant - Maruti Divte admitted that there was a default and prayed for extension of time to make payment of the instalments of the purchase price. On 1.11.1974 the learned ALT granted extension of time as prayed for by the respondent nos.1A and 1B and directed each of them to pay an amount of Rs.1399.75 after deducting the amount already paid by them. They were directed to make the payment on or before 31.12.1974. It further reveals that the tenant on 31.10.1974 entered into an agreement for sale in respect of the lands in question in favour of third party and handed him over the possession thereof on the very day. In the said agreement, a specific reference to section 32-G proceedings was made and the liability of the tenant to make payment of the remaining instalments was taken over by the purchaser. It further reveals that respondent nos.1A and 1B had filed an application purporting to be an application under section 43 of the Act seeking permission to sell

the land in favour of the said third party. The permission was, accordingly, granted by the Sub-Divisional Officer on 7.5.1984. The petitioner never challenged the said order passed under section 43A of the Act read with Rule 25A of the Bombay Tenancy and Agricultural Lands Rules. In the meantime, according to the petitioner, the third party, with whom the agreement dated 31.10.1974 was executed, in turn transferred the lands in question to respondent nos.3 and 4 in this petition. Being aggrieved and dissatisfied with the order dated 1.11.1974 passed by ALT, granting extension of time to respondent nos.1A and 1B for making payment of the purchase price, the petitioner filed appeal bearing No.5/1975 against that order. However, the said appeal was dismissed. The matter was further carried in revision before the Maharashtra Revenue Tribunal bearing revision application No.8/1986. The revision application was also dismissed. Hence the present petition is filed by the petitioner under Article 227 of the Constitution of India.

3. Mr.Dani, learned counsel for the petitioner at the outset submitted that once there was admittedly a default on the part of the tenant

inspite of not having taken steps under section 32K, the purchase can still be declared as ineffective, if the tenant does not continue in possession of the property. He further submitted that no tenant can gain advantage under section 32-K of the Act unless and until he proves that he remains in property and intended to cultivate land. The provisions of the Act cannot be made applicable to the person who was not interested in agriculture, but was interested in selling said land and who in fact sold the land and parted with possession of the lands in question.

4. The respondent-tenant was declared as deemed purchaser under section 32-G of the Act in October 1961. He continued to be in possession of the lands till December 1974 and on 31.10.1974 he entered into an agreement for sale in favour of one Mahadeo S.Busari.

4.1 Section 43 deals with the restrictions on transfers of land purchased or sold under this Act. It provides that no land purchased by a tenant under section 32, 32F, 32I, 32-O, 32-C or 43-1D or sold to any person under section 32P or 64, shall be transferred by sale, gift, exchange, mortgage,

lease or assignment without the previous sanction of the Collector, such santion shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government. Sub-section (2) of section 43 provides that any transfer of land in contravention of sub-section (1) shall be invalid. The sanction given by the Collector for sale shall be invalid only if it is in contravention of sub-section (1) and unless such declaration is sought and pronounced in appropriate proceedings, it cannot be treated as illegal. Section 32R provides that, if any time after the purchase of land under any of the provisions, the purchaser fails to cultivate the land personally, he shall, unless the Collector condones such failure for sufficient reasons, be evicted and the land shall be disposed of in accordance with the provisions of section 84-C of the Act. In the present case the respondent-tenant was personally cultivating the land till 31.10.1974 i.e. the date on which the agreement for sale was executed by the tenant in favour of the third person and that was sanctioned by the Collector under section 43 read with Rule 25 of the Bombay Tenancy and Agricultural Lands Rules and, therefore, in the instant proceedings the transfer

of land to respondent no.2 and subsequent transfer to respondent nos.3 and 4 cannot be declared illegal. As a matter of fact by the subsequent sanction granted under section 43 of the Act, the Collector deemed to have condoned the failure on the part of the tenant to cultivate the land personally after 31.10.1974. Admittedly, no action whatsoever was taken against the tenant either under section 32R or any other provisions of the Act. It is against this backdrop of the facts I would like to consider the submissions of Mr.Dani that once there was admittedly a default on the part of the tenant inspite of not having taken steps under section 32K, the purchase can still be declared as ineffective, if tenant does not continue in possession of the property. It is clear that in the proceedings initiated by the petitioner under 32P of the Act seeking resumption and disposal of the lands in the manner provided in sub-section (2) of section 32-P, the tenant made an application seeking extension of time to make the payment and that prayer was granted by A.L.T. by its order dated 1.11.1974. The petitioners were given time to make the balance payment before 31.12.1974. There is no dispute that the payment was made by the tenant before the said date.

Sub-section (1B) (b) of section 32K of the Act provides that where the tenant-purchaser is in arrears of four instalments, where the number of instalments fixed is four or more, and all the instalments in any other case, he may during the period of six months from the date of default of the payment of price in lump sum, or of the last instalment, whichever is later, apply to the tribunal to condone default on the ground that he, for sufficient reasons, was incapable of paying the price in the lump sum or instalments within the time, and if the tribunal after holding such inquiry if it thinks fit, is satisfied with the reasons given, it may allow further time of one year to the tenant-purchaser to pay the price in lump sum or for payment of the arrears, and may, for that purpose increase the total number of instalments to sixteen. It is thus clear that the further time was granted and admittedly payment of the price was made by the tenant. It is clear from the language of the provisions of section 32K that the tribunal has ample powers to condone the default and grant further time to pay the price of land. In any case section 32K does not entitle the landlord to seek resumption of land under section 32P merely because the instalments were not paid by

the tenant within time prescribed and that the tenant failed to cultivate the land personally. In so far as the possession of the land in question is concerned, the tenant transferred the lands and the sanction under section 43 of the Act was granted by the SDO. The petitioner-landlord did not challenge the order under section 43 of the Act granting sanction to the tenant to transfer the land. In the circumstances I find no merits in the petition. This petition, therefore, fails and is dismissed as such. Rule stands discharged.

(D.B.Bhosale, J.)